IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 69/2007

(Mr. S.B. Ganguly and Ors. Vs. Devendra Kumar and Anr.)

Date of Order : 17/01/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. JP Joshi, for the petitioners
Mr. Rameshwar Dave, Public Prosecutor for the State.
Mr. Pradeep Shah, for the non-petitioner No.1

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners seek recalling of order dated 18.12.2006 passed by this Court in S.B.Criminal Misc. Petition No. 985/2002.

I have heard learned counsel for the petitioners as well as Public Prosecutor for the State and the counsel appearing for the complainant-non-petitioner No.1.

It is contended by the learned counsel for the petitioners that the petitioners were not willfully absent from the Court when the matter was called and therefore, the order dated

18.12.2006 may be recalled. It appears from the order dated 18.12.2006 that the order has been passed after taking into account the material available on record as also taking into account the legal proposition settled by the Hon'ble Supreme Court. The order dated 18.12.2006 sought to be recalled is a final order disposing of the case.

There is no provision under the Code of Criminal Procedure to review, recall or alter the judgment or final order, disposing of a case except the provision of Section 362 Cr.P.C. which reads as under :-

> "362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order, disposing of a case, shall alter or review the same, except to correct a clerical or arithmetical error.

In Moti Lal Vs. State of Madhya Pradesh, AIR 1994 SC 1544, the Hon'ble Supreme Court held that Section 362 Cr.P.C. in clear terms lays down that the court cannot alter judgment after the same has been signed except to correct clerical or arithmetical errors. That being the position, the High Court had no jurisdiction under Section 482 Cr.P.C. to alter the earlier judgment.

In Adalat Prasad Vs. Rooplal Jindal and Ors., JT 2004 (7) SC, 243, a Three Judge Bench of the Hon'ble Supreme

Court held that Criminal Procedure Code does not contemplate a review of an order. This view has been reiterated by another Three Judge Bench of Hon'ble Supreme Court in Subramanim Sethuraman Vs. State of Maharashtra and Anr., 2004 CRI.L.J. 4609, wherein the Hon'ble Court relying on the decision in Adalat Prasad's case (supra) held that there being no provision under the Code for review of an order made by the same Court.

In this view of the legal position culled out from the aforesaid decisions of Hon'ble Supreme Court, I do not find any merit in the criminal misc. petition and it is dismissed accordingly.

(H.R.PANWAR),J.

rm/rp